



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2012-0344, FRL- 9718-9]

Approval and Promulgation of Implementation Plans; State of Oregon; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve portions of a State Implementation Plan (SIP) revision submitted by the State of Oregon on December 10, 2010 and supplemented on February 1, 2011, as meeting the requirements of Clean Air Act (CAA or the Act) section 169A and B and the regional haze regulations in 40 CFR 51.308. In a previous action on July 5, 2011, EPA approved portions of the December 10, 2010, SIP submittal as meeting the requirements for interstate transport for visibility of CAA section 110(a)(2)(D)(II) and certain requirements of the regional haze program including the requirements for best available retrofit technology (BART). 76 FR 38997. On May 23, 2012, EPA proposed approving the remaining portion of the Regional Haze SIP including those portions that address requirements of the CAA and EPA's rules that require states to set Reasonable Progress Goals (RPGs) for their Class I areas, and to develop a Long-Term Strategy (LTS) to achieve these goals. 77 FR 30454. In this Federal Register notice EPA finalizes its approval of the remaining Regional Haze SIP elements for which EPA previously took no action in the July 5, 2011 notice.

DATES: This action is effective on [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R10-OAR-2012-0344. Generally documents in the docket are available at <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT-107, 1200 Sixth Avenue, Seattle, Washington 98101. Please note that while many of the documents in the docket are available electronically at <http://www.regulations.gov>, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, large maps or voluminous materials, is not placed on the Internet and will be publicly available only at the hard copy location. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Keith Rose at telephone number (206) 553-1949, rose.keith@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA. Information is organized as follows:

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I. Background

In the CAA Amendments of 1977, Congress established a program to protect and improve visibility in the national parks and wilderness areas. See CAA section 169A. Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. See CAA section 169B. EPA promulgated regulations in 1999 to implement sections 169A and 169B of the Act. These regulations require states to develop and implement plans to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas¹ (Class I areas). 64 FR 35714 (July 1, 1999); see also 70 FR 39104 (July 6, 2005) and 71 FR 60612 (October 13, 2006).

On behalf of the State of Oregon, the Oregon Department of Environmental Quality (ODEQ) submitted its Regional Haze State Implementation Plan (Regional Haze SIP submission or SIP submittal) to EPA on December 10, 2010 and supplemented it on February 1, 2011. In a previous action EPA approved certain provisions in Oregon's Regional Haze SIP submission. 76 FR 38997. This previous action approved the BART provisions (40 CFR 51.308(e), calculation of baseline and natural conditions (40 CFR 51.308(d)(2)), and state wide emission inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I area. EPA also approved Oregon Administrative Rules OAR 340-223-0010 through 340-223-0080 (Regional Haze Rules). In that same action, EPA also approved portions of the SIP submittal as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with respect

¹Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager." 42 U.S.C. 7602(i). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal area."

to the visibility prong for the 1997 8-hour ozone and 1997 PM_{2.5} National Ambient Air Quality Standards (NAAQS).

In a proposed rule published on May 23, 2012, EPA proposed approving the remaining provisions of Oregon's Regional Haze SIP submission, the regional haze requirements for establishing RPGs and developing a LTS. 76 FR 38997. A detailed explanation of the Regional Haze Rule including the requirements relating to the reasonable progress goals and long term strategy, ODEQ's reasonable progress goals and long term strategy, and EPA's reasons for approving this SIP revision were provided in the notice of proposed rulemaking on May 23, 2012, and will not be restated here. See 77 FR 30454. The public comment period for this proposed rule ended on June 22, 2012. EPA did not receive any comments on the proposal.

II. Final Action

EPA is approving the remaining portions of the Regional Haze SIP submittal from the State of Oregon, submitted on December 10, 2010 and supplemented on February 1, 2011, as meeting the remaining regional haze requirements that require states to prevent any future and remedy any existing visibility impairment in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographical area. See CAA section 169A and B and Federal Regulations in 40 CFR 51.308. Specifically included is EPA's approval of the RPGs established by Oregon and the elements of its LTS which include: 1) Ongoing Air Pollution Control Programs, 2) Measures to Mitigate Impacts of Construction Activities, 3) Emission Limitations and Schedules for Compliance, 4) Source Retirement and Replacement Schedules, 5) Smoke Management Techniques for Agricultural and Forestry Burning, and 6) Enforceability of Emission Limitations and Control Measures.

III. Scope of Action

Oregon has not demonstrated authority to implement and enforce the Oregon Administrative rules within “Indian Country” as defined in 18 U.S.C. 1151. “Indian country” is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Therefore, this SIP approval does not extend to “Indian Country” in Oregon. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Consistent with EPA policy, EPA nonetheless provided a consultation opportunity to Tribes in Idaho, Oregon and Washington in letters dated January 14, 2011. EPA received one request for consultation, and we have followed-up with that Tribe

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, and Volatile organic compounds.

Dated: August 8, 2012

Julie M. Hagensen
Acting Regional Administrator
Region 10.

40 CFR part 52 is amended as follows:

PART 52 -- [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(151)(ii)(B) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(151) * * *

(ii) * * *

(B) The remaining portions of the December 20, 2010, SIP revision, which relate to establishing reasonable progress goals, and a long term strategy to achieve these reasonable progress goals.

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3. Section 52.1973 is amended by adding paragraph (g)(2) to read as follows:

§ 52.1973 Approval of plans.

* * * * *

(g) * * *

(2) EPA approves the remaining portions of the Regional Haze SIP revision submitted by the Oregon Department of Environmental Quality on December 20, 2010, and adopted by the Oregon Department of Environmental Quality Commission on December 9, 2010, as meeting the requirements of the Clean Air Act section 169A and 40 CFR 51.308(d)(1) regarding establishing

reasonable progress goals, and 51.308(d)(3) for developing a long term strategy to achieve these goals.

[FR Doc. 2012-20496 Filed 08/21/2012 at 8:45 am; Publication Date: 08/22/2012]